

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEON BROWN,

Plaintiff,

v.

R. ESMOND, et al.,

Defendants.

Case No. 1:21-cv-00808-CDB (PC)

**FINDINGS AND RECOMMENDATIONS TO
DISMISS CERTAIN CLAIMS**

14-DAY OBJECTION PERIOD

Clerk of the Court to Assign District Judge

Plaintiff Leon Brown is a state prisoner proceeding *pro se* in this civil rights action brought pursuant to 42 U.S.C. § 1983.

RELEVANT PROCEDURAL BACKGROUND

On May 13, 2021, Defendants R. Esmond, J. Gutierrez, B. Cates and K. Holland removed this action from the Sacramento County Superior Court to the Sacramento Division of this Court. (Doc. 1.) On May 14, 2021, Defendants filed a request for screening of Plaintiff's complaint pursuant to the Prison Litigation Reform Act (PLRA). (Doc. 3.)

On May 18, 2021, Magistrate Judge Allison Claire granted Defendants' request for screening, ordering Defendants to file a responsive pleading to the complaint, or any portion that survives screening, 30 days from the date of the screening order. (Doc. 6.) The following day, the action from transferred from the Sacramento Division to the Fresno Division. (Doc. 7.)

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1 This action was reassigned to the undersigned as magistrate judge on October 6, 2022.
2 (Doc. 11.)

3 On October 31, 2022, this Court issued its First Screening Order. (Doc. 12.) Plaintiff was
4 given 21 days to elect one of the following options: (1) to file a first amended complaint curing
5 the deficiencies identified in the order; (2) to notify the Court of his willingness to proceed only
6 on his claims for deliberate indifference to health and safety; or (3) to file a notice of voluntary
7 dismissal. (*Id.* at 12.)

8 Following a 30-day extension of time, on December 8, 2022, Plaintiff filed notice electing
9 to proceed on the deliberate indifference to health and safety claims. (Doc. 15.)

10 **FINDINGS AND RECOMMENDATION**

11 Accordingly, and for the reasons set forth in the Court's screening order (Doc. 12), the
12 Court RECOMMENDS that the claims in Plaintiff's complaint be DISMISSED, *except* for the
13 claims of deliberate indifference to health and safety (Plaintiff's claim two) against Defendants R.
14 Esmond, J. Gutierrez, B. Cates, P. Vasquez, and W.J. Sullivan, pursuant to 42 U.S.C. § 1983.

15 The Clerk of the Court is DIRECTED to randomly assign a district judge to this action.

16 These Findings and Recommendations will be submitted to the United States District
17 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). Within 14 days of the date of
18 service of these Findings and Recommendations, a party may file written objections with the
19 Court. The document should be captioned, "Objections to Magistrate Judge's Findings and
20 Recommendations." Failure to file objections within the specified time may result in waiver of
21 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
22 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23 IT IS SO ORDERED.

24 Dated: December 12, 2022

25 
UNITED STATES MAGISTRATE JUDGE